

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 04 LAGOS 001106

SIPDIS

STATE PASS TO EXIM, OPIC AND TDA
KABUL PASS TO SROSS
TRANSPORTATION PASS TO MARAD

E.O. 12958: N/A

TAGS: [EWWT](#) [EPET](#) [EINV](#) [ECON](#) [PGOV](#) [NI](#)

SUBJECT: NIGERIAN DOMESTIC SHIPPING LAW TAKES EFFECT

REF: LAGOS 634

11. SUMMARY. Nigeria's sweeping Cabotage Act took effect on May 1, requiring all vessels used for domestic trade to be Nigerian built, owned and manned. Nigeria has little capacity to meet any of the three requirements, and one-year waivers are allowed under the law. The GON has done little to implement the law through administrative guidance and processes, and an exception for fishing vessels is being carved out even before regulatory schemes have been enacted. Oil executives are dismissive of the law's impact on their industry, asserting that waivers will be easily obtained as government officials know all too well that Nigeria's indigenous industry cannot support the law's reach. While intended as a protectionist measure to boost indigenous participation in shipping and in petroleum services, there is no reason to believe that in the near term this legislation will be widely enforced or that it will have the desired effect of strengthening Nigeria's fledgling shipping industry. END SUMMARY.

12. Nigeria's Cabotage Act of 2003 took effect May 1, 2004. Another example of Nigeria's growing protectionist proclivity, the law restricts the use of foreign vessels used in domestic trade on Nigerian waters in an attempt to encourage indigenous firms to participate in Nigeria's shipping industry. Most analysts agree that Nigeria's current registry of Nigerian-owned vessels is inadequate to handle the domestic coastal trade market. For example, recently published figures from the Nigerian Maritime Authority (NMA) indicate that as of December 2003, 1,258 vessels were engaged in off-shore oil operations, only 22 of which were Nigerian-owned. Likewise, two Nigerian papers recently cited a report on petroleum product movement through the Lagos port complex indicating that of 266 tanker vessels engaged in coastal trading in 2003, only 44 were Nigerian-owned. (Because of limited jetty facilities, large international tankers bringing fuel to Nigeria transfer their cargoes at sea into smaller tankers for offloading onshore.)

13. Further, the Nigerian shipbuilding industry is far under-capacity in respect to the number of vessels used to move goods and people on Nigerian waters. We do not have figures as to the number or types of ships being built in Nigeria, but the local newspaper BusinessDay recently published a list of eleven shipyards with dockyard/slipway capacity ranging from 250 to 25,000 tons. Seven had capacities under 2,000 tons.

14. Some growth is reported in the domestic shipping sector. A new industry group has been formed in Lagos, the Indigenous Shipowners' Association of Nigeria (ISAN), and some Nigerians are entering the shipping industry, particularly as Nigerian-owners of cabotage vessels. For example, a new Nigerian-Norwegian joint venture, Vigeo Farstad Shipping Ltd., is reportedly operating six offshore oil supply vessels. Japaul Ltd., a Port Harcourt shipping firm with a reported 18 vessels, has announced it will attempt to raise capital for expansion by going public on the Nigerian Stock Exchange (NSE), a still novel but sound approach to capitalization as Nigerian bank interest rates remain high and loan maturities short.

15. American oil company executives repeatedly have told us they are unconcerned about the cabotage law and they anticipate getting waivers for vessels that do not meet the law's requirements. (COMMENT: Oil companies are already working with the GON to meet local content requirements in contracting (reftel), so it may be that they simply view this law as more of the same. END COMMENT.) Oil services companies could be most directly affected by implementation of the law, but also seem unconcerned.

16. The Nigerian fishing industry's imports of American vessels and parts and equipment may be most affected by the law if it is not amended. Manjit Sadarangani, owner of Atlantic Shrimpers Ltd., told Commercial

Attache and Econoff that he wrote several letters to the GON arguing the Cabotage Act contradicts the Nigerian Investment Promotions Decree of 1995 by attempting to restrict foreign ownership of vessels transporting passengers or cargo. He said he further argued that since fishing vessels do not transport passengers or cargo, they should not have been included in the Cabotage Act's reach. Sadarangani said industry representatives presented their arguments to President Obasanjo directly in early May, and that the president ordered fishing vessels be removed from the scope of the Cabotage Act. (NOTE: The Embassy sent a letter to the GON in mid-May raising concern over the reach of the Act and the possibility that the protectionist measure may discourage foreign investment in the shipping industry, further stifling its expansion rather than promoting it as intended. END NOTE.)

17. We reviewed the Coastal and Inland Shipping (Cabotage) Act 2003 as published in the Federal Republic of Nigeria Official Gazette, No. 88 Lagos, 3 October 2003, Vol 90, and an analysis published by KPMG in January 2004. Paragraphs 8-18 summarize Nigeria's Cabotage Act of 2003.

Only Nigerian-Made Vessels of Nigerian Owners and Operators May Ply Nigerian Waters

18. Only vessels built and registered in Nigeria and that are wholly owned and manned by Nigerian citizens may transport cargo and passengers within the waters of Nigeria. Further, foreign vessels or tugs cannot tow within Nigerian waters except when rendering assistance to persons, vessels or aircraft in danger or distress. A foreign-made vessel rebuilt in Nigeria may be operated in Nigerian waters if all of the rebuilding work, including construction of major hull and superstructure components, was done in Nigeria. Nigerian waters include coastal, territorial, inland, and island waters, or any other waters within the Exclusive Economic Zone of Nigeria.

Petroleum Sector

19. Several sections of the law apply specifically to the petroleum sector. Any vessel, tug or barge used to transport materials or supply services to and from oil rigs, platforms and installations located onshore or offshore must be owned wholly by a Nigerian citizen. The law also applies to the transportation of goods or persons to and from an exhaustive list of oil-related facilities and operations.

Exceptions

110. The only exceptions to the Act are for certain salvage vessels, vessels used for pollution emergencies, vessels used for ocean research by Nigerian authorities, and vessels sponsored or operated by foreign governments for scientific research.

Waivers

111. The Minister of Transport may waive provisions of the Cabotage Act if there is no Nigerian-owned vessel suitable and available to perform a specific activity. Likewise, the Minister may issue a waiver if no Nigerian shipbuilder has the capacity to construct a vessel of a particular type and size needed, or if there is no qualified Nigerian officer or crew available for specific positions needed. Waivers will be valid for one year only, and will be issued first to joint venture shipping companies and their vessels where the Nigerian partner holds at least 60 percent equity in the joint venture, and where that equity is held free from any foreign obligations. Waivers may then be issued to vessels owned by any shipping company registered in Nigeria.

Licenses to Foreign Vessels

112. A foreign-owned or foreign-crewed vessel participating in the domestic coastal trade must carry a license. A person who resides in Nigeria may apply for such a license on behalf of a foreign-owned vessel if a waiver condition and other administrative criteria

are met. Licenses shall be granted for a fee, which must be published. A tariff will also be imposed on vessels obtaining licenses. A license to a foreign-owned vessel shall be valid for no more than one year.

Registration

13. Every vessel in the domestic coastal trade must be registered in the Special Cabotage Register kept by the Registrar of Ships. The Minister of Transport is to continually collect information regarding the availability, characteristics and uses of Nigerian vessels, and record that information in the Special Register. Unless a condition for waiver is present, any vessel to be registered must be wholly owned by Nigerian citizens or owned by a company of at least 60 percent Nigerian ownership.

14. "Bareboat vessels" to be registered include passenger vessels, crew boats, bunkering vessels, fishing trawlers, barges, off-shore service vessels, tugs, anchor handling tugs and supply vessels, floating petroleum storage vessels, dredges, tankers, carriers, and any other craft or vessel used to transport persons, property or any substance on, through or under water.

15. A vessel under a finance agreement may be registered if the term of financing is at least three years and the financier meets Nigerian citizenship requirements under the Act. The financier's interest in the vessel may lie only in an investment rather than operational capacity, and the financier cannot derive a majority of its aggregate revenue from the operation or management of the vessel.

16. Foreign-owned vessels already engaged in the domestic coastal trade will be allowed temporary registration for the duration of the contract for which a vessel is employed. Vessels over 15 years old at the time the Act comes into effect will be allowed only five more years of service, and must meet seaworthiness requirements of appropriate agencies.

Penalties and Enforcement

17. Penalties for violations of the Cabotage Act include fines up to 15 million naira and forfeiture of vessels. A unit will be created within the National Maritime Authority specifically to enforce the Act. Officers assigned to the unit may stop and board a vessel reasonably believed to be in violation of the Act, and may detain the vessel and its officers. Officers may search vessels with warrants, and seize anything onboard that may serve as evidence of a violation of the Act. A search may be conducted without a warrant if exigent circumstances make it impractical to obtain a warrant. Under exigent circumstances, an enforcement officer may issue a detention order without a court order if the officer reasonably believes that the vessel was involved in a violation of the Act. Such a detention order should be registered in court as soon as practicable.

Cabotage Financing Fund

18. A surcharge of two percent will be assessed on all contracts for vessels engaged in coastal trade, to be deposited into the Cabotage Vessel Financing Fund and used to promote the development of indigenous ship acquisition capacity. The National Assembly may also assess a charge applied toward the Fund.

HINSON-JONES